IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODG) NO. 630 OF 2006

M/s. K. Madhani & Co.] ..Petitioners

V/s.

1. Municipal Corporation of Greater and ors.] ..Respondents

Mr. V.A. Thorat, senior Advocate with Mr. A.R. Pandey for the petitioners.

Mr. D.H. Mehta i/b Pravin Mehta & Mithi & Co. for the respondent No.2.

Mrs. P.A. Purandare for respondent No.1.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED : 04TH APRIL, 2006

P.C.

. Petitioner, alongwith respondent No.4 and others, are bidders pursuant to a tender notice issued by respondent No.1. It is a case of the petitioners that respondent No.2 was not eligible and the action of respondent No.1 in opening packet "C" is without the authority of law.

2. Petitioners, by this Petition based on the tender conditions and more specifically clauses A and B have submitted as under. Firstly, that under clauses A and B, the work executed should be work in the name of the bidder. Secondly, it is submitted that the expression "atleast 75% length of total length" mentioned in the tender would mean the total length of the present tender and thirdly, the tenderer should have atleast done work of 1000 rm length of 900 mm. dia. or above in one single contract. It is submitted that the work completed by respondent No.2 earlier was as a sub-contractor and as such, that work could not be considered. Similarly, in the ongoing work from the records available, the petitioner had not completed 1000 rm. length. At any rate, the executed work cannot be of the ongoing contract. The decision, therefore, by respondent No.2 to accept the tender of respondent No.2 by opening packet "C" is without the authority of law. It is pointed out that the Officer who had opened the tender had so understood.

3. On behalf of the respondents, our attention is invited to the note to the post qualifications. Note No.2 reads as under:

> "The quantity and cost mentioned in "A" and "B" above will be considered for completed part of ongoing work of laying water main/mortar lining of water main for which Certificate from concerned Executive Engineer shall be submitted."

. From the above, it will be clear that the construction sought to be put up by the petitioner on clause A that the work done must be in respect of work already executed and not ongoing work, cannot be accepted. The note clarifies what is the executed work which can be considered.

4. Therefore, insofar as this part is concerned, the decision of respondent No.1 to consider the ongoing work really cannot be faulted. The only other question that remains is whether respondent No.2 in the ongoing work has done work in the length of 1000 rm. As there was some controversy, we had called on respondent No.1 to file an Affidavit. Shri M.S. Kamble, Dy. H.E. (Construction) has filed an Affidavit. The last date for accepting tenders was 16th February, 2006. The petitioner had earlier annexed Certificates, but those were upto December, 2005, which indicates that the petitioner had done work upto 70%. The present ongoing contract is in the length of 1130 metres. As per the

Affidavit now filed, it has been set out that work was completed to the tune of fitting of 920 metres providing and laying pipe line with 3 nos. valves and further providing of 1070 metres of pipe line as on 16th February, 2006. It is also pointed out that the work of fitting of the said pipe line is still under progress and has to be completed by November, 2007. The other documents on record annexed with the Rejoinder filed by the petitioners herein would indicate that the Tender Committee, at its meeting held on 2nd March, 2006, could not arrive at any conclusion whether the tender of respondent No.2 fulfilled the mandatory conditions regarding post qualifications and as such, placed the matter for opinion of AMC (P) for necessary orders. The notings placed on record would indicate that the proposal put up by Dy.H.E. (Construction) to accept the respondent No.2's tender as responsive was accepted. This was on the basis that the petitioner had been tendered work considering the experience they had done earlier. In fact, in the earlier Affidavit filed on behalf of respondent No.1 it was set out that in the meeting held on 9th July, 2004, in the Chamber of the then AMC (P) alongwith Hydraulic Engineer and others it was decided to consider the work undertaken by respondent No.2 as approved sub-contractor and it is in

those circumstances that the contract was awarded to the petitioner herein. Apart from that, in the Affidavit of 28th March, 2006, it is set out that under the FIDIC Rules for the World Bank Project the nominated sub-contract is treated at par with a contract the contractor is required to indemnify the contractor in respect of the entire work undertaken by them, including the liabilities under the Project. If, after considering this material and the experience of respondent No.2 and also considering the power to the Commissioner under Section 72(2), respondent No.1 has taken a decision to treat the tender of respondent No.2 as responsive, we really cannot say that the same is arbitrary and/or based on no material or extraneous to the decision taken. By the action, all that has happened is that the tender of respondent No.2 has been treated as responsive.

5. In these circumstances, we do not think that the decision of respondent No.1 is arbitrary and consequently, find no merit in this Petition which is accordingly dismissed.

6. Learned counsel for the petitioner prays that respondent No.1 should be asked not to proceed in evaluating the tenders. In our opinion, it being a public project, it would not be appropriate for this Court to issue any direction to the respondents not to proceed with considering the tenders which are responsive. Hence the request as prayed for, is rejected.

Sd/-
[F.I. REBELLO,J.]

Sd/-
[ANOOP V. MOHTA, J.]